HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the case.

Criminal Appeal No. 1048 of 2001

Date of Decision : 8th May, 2006

A.F.R. (Approved for reporting)

_____
Not approved for reporting.

Date 08/5/2006 Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal appeal no. 1048 of 2001
(Old No. 1697 of 1982)

Karnail Singh aged about 27 years
S/o Inder Singh
R/o Village Patankoonda
Post Office-Sitrarganj
District – Nainital .....Appellant

Versus

State of Uttaranchal ....Respondent

Smt. Pushpa Joshi, learned counsel for the appellant
Shri G.S. sandhu, learned A.G.A. for the State

Hon'ble J.C.S. Rawat, J.

1. This Criminal Appeal has been directed against the judgment and order dated 13.07.1982 passed by the 1st Addl. Sessions Judge, Nainital in S.T. No. 219 of 1980 State Vs. Inder Singh and 5 others convicting the appellant u/s 307 I.P.C. and sentencing him to undergo 4 years R.I.

2. The factual matrix of the case is that a F.I.R. was lodged at the Police Station Sittarganj on 19.04.1980 at about 6:30 p.m. alleging therein that on 19.04.1980 at about 4:00 p.m., the injured Trilok Singh and his brothers Surendra Singh and Joginder Singh were harvesting the crops of wheat with the help of the machine in the filed situated infront of their house. The appellant Karnail Singh and the other co-accused who had been acquitted by the trial court, namely, Indra Singh, Surjan Singh, Gurdayal Singh @ Dayal Singh, Iqbal Singh and Kartar Singh came over there in a tractor trolley and asked Trilok Singh and his brothers to leave the field and run away from there. According to him, Karnail Singh and Inder Singh Singh were armed with gun, Iqbal Singh had lathi, Surjan Singh had sword,

Dayal Singh had gandasa and Kartar Singh had spear. When the complainant party fled away from the seen of the occurrence, the accused started ploughing their field with the tractor. When Sri Trilok Singh and his brothers were running towards their house and reached near their house they challenged the appellant and other persons and asked them not to plough their field whereupon Karnail Singh fired shot from his gun which hit trilok Singh. Immediately after sustaining the gun shot injuries, trilok Singh fell down on the earth. The appellant karnail Singh thereupon fired three or four more shots but they could not hit Trilok Singh-injured. The brothers who were accompanying the injured-Trilok singh dragged the injured-Trilok Singh inside the house. Thereafter, the appellant and the other persons continued to plough the field for about 45 minutes and then they left the place of occurrence. It is also in the prosecution story that the disputed field of the complainant is about 20-25 paces from the house of the complainant. After recording the F.I.R. the injuries of Trilok Singh were medically examined in the Government Hospital, Nanakmata by Doctor Mahendra Singh at about 22:30 hrs. on same day. The following injuries were found on his person:

1. *A fire arm injury present on the right side of the chest wall. It was 6.5 cm. lower to the mid of the right clavicle and 7 cm above the right nipple. Wound of the entrance-punctured, circular in shape. Bleeding through the wound was present. Number was one. Size 0.5 cm. It was deep 1 cm. and margins invertered. No tattooing and singeing of hair. Direction of the wound was straight.*
2. *A fire arm injury present over the right forearm on the front side. It was 11 cm from the lower medial (ulna head) of the wrist joint and 15.8 cm. from the medial condyle of*

humeres bone, punctured, circular wound measuring 0.5 cm. depth of the wound was 1.5 cm. deep. Margins inverted. No tattooing present. Bleeding through the wound was present. Direction of the wound was straight. Number was one.

3. A fire arm punctured circular entrance wound present on the front of the right thigh 1.5 cm. below the inguinal ligament 3.5 cm. medial and lower to the anterior iliac crest. Size of the wound was 0.5 cm. x 0.5 cm deep 0.5 cm. in dimension. Surrounding contused red area present measuring 1.5 cm. x 1.5 cm. in direction. No tattooing and no burning present. Number of wound was one. Adherent blood present surrounding the wound which is wiped out by the wet cloth.

3- The Doctor has further opined that the injuries have been caused by fire-arm and the duration was found fresh. Two pallets were recovered by the Doctor from the body of the injured-Trilok Singh. The Investigation Officer recorded the statement and prepared the site plan of the place of occurrence. He also recovered the gun from the house of the appellant, Karnail Singh and after conclusion of the investigation the Investigating Officer submitted the chargesheet before the court.

4- The accused-appellant denied the charges and claimed trial.

5. The prosecution is support of his case, examined seven witnesses. There are three eyewitnesses of the fact, namely, Trilok Singh-PW2, Jogender Singh-PW3 and Shahjade-PW4. PW2-Trilok Singh was himself injured and he was the victim of the occurrence. PW1-Dr. Mahendra Singh was the Doctor who examined the injured Trilok Singh and prepared the medical report Ex-Ka-1. PW5-Darshan Singh and PW6-Bagga Singh were produced as witness of the

recovery of the gun by the Investigating Officer from the Houser of karnail Singh-appellant and they are witness of the recovery of holes from the place of occurrence. Both the witnesses turned hostile and they stated that their signatures were obtained on the blank papers forcibly. PW7-Amritpal Singh (S.I.) is the Investigating Officer of this case who had proved the police papers in support of the prosecution case.

6. The statement of the appellant was recorded u/s 313 Cr.P.C. and the appellant denied the prosecution case and stated that he had been prosecuted illegally and he also admitted that the gun was taken into possession by the Investigating Officer from his house. The accused-appellant did not examined any defence witness in support of his case.

7. After appraisal of the evidence, the learned Sessions Judge convicted the appellant as indicated above. The rest of the co-accused were acquitted by the learned Sessions Judge.

8. I have heard learned counsel for the parties and perused the record.

9. It needs to be mentioned that it is not disputed that the injured Trilok Singh-PW2 sustained the fire arm injury on the dated of occurrence. P/W1-Dr. Mahendra Singh had also deposed before the court that he examined the injured-Trilok Singh and found the gun shot injuries on the person of the injured-Trilok Singh as has been indicated above. He has also opined that the duration of the injuries were fresh and the injuries sustained by the injured was of fire-arm injuries. PW3- Joginder Singh and PW4-Shahjade also stated that the injured-Trilok Singh had sustained the gun shot injuries.

10. Now I have to consider whether the appellant, Karnail Singh was responsible for the injuries sustained by Trilok Singh-PW2. The prosecution has taken a case that the gun shot injuries were caused by the appellant-Karnail Singh. Whereas the learned counsel for the appellant contended that the said injuries were self-inflicted and the appellant had not caused these injuries on the person of the injured. The prosecution in support of his case, adduced the evidence of PW2-Trilok Singh, PW2- Joginder Singh and PW4-Shahjade. PW2-Trilok Singh was himself an injured witness. All the witnesses have narrated the eye account of the incident as has been indicated in para 2 of my judgment.

11. Learned counsel for the appellant contended that the prosecution had failed to prove the case against the accused-appellant beyond reasonable doubt. Learned counsel for the appellant pointed out certain discrepancies in the evidence of the prosecution. Learned counsel for the appellant further contended that there is inordinate delay in lodging the F.I.R. Learned counsel for the appellant contended that the F.I.R. of the incident could have been lodged within 1-1/2 hrs because the place of the occurrence is only 7 kms. from the police station. It was further contended that the parties had a tractor and they could cover 7 kms. within a span of ½ hrs. Learned A.G.A. refuted the contention. Perusal of the record reveals that the incident took place on 19.04.1980 at about 4:00 pm. and the F.I.R. was lodged at 6:30 pm at the police station. The distance between the place of the occurrence and the police station is about 7 kms. PW2-Trilok Singh had stated in his evidence that the appellant fired upon him with the intention to kill him and the appellant fired 3-4 fires upon the appellant. The injured PW2-Trilok Singh entered into the house due to the fear of appellant. It is also in the evidence that the appellant ploughed the field was about 45 minutes. The incident took place at about 4:00 pm meaning

thereby the presence of the appellant at the disputed field was about 45 minutes. Thereafter, Surender Singh went to the village where Ajaib Singh met him and he came to his house and scribed the F.I.R. and thereafter it was taken to the police station where Jogender Singh-PW3 lodged the report at the police station. It was pointed out by the learned counsel for the appellant that Ajaib Singh by chance met him and the presence of the Ajaib Singh is doubtful as Ajaib Singh belonged to Nanakmatta therefore his presence was doubtful. The evidence of Jogender Singh-PW3 further fortifies this fact that Surender Singh met Ajaib Singh on the way and thereafter he subscribed the report. The evidence of Jogender Singh-PW3 remained consistent during the cross examination. The evidence is credible and cogent on this point. It can also be taken into account that the distance of 7 kms. could be covered within ½ hr. or 45 minutes after subscribing the report. There is no delay in lodging the F.I.R. Thus the F.I.R. cannot be considered as a outcome of due consultation and deliberation. It was reported promptly. Thus I do not find any substance in the argument advanced by the learned counsel for the defence.

12. It is also transpired from the record that there is an enmity between the parties. It is also in the evidence that the Civil Suit pertaining to this property was a subject matter of a civil suit before the learned Munsif. It is also revealed from the record that the complainant party had been convicted u/s 324 I.P.C. Thus it is admitted to the parties that there is enmity in between them. It was further contended that the witnesses are related and interested in this matter. It was further pointed out that their evidence cannot be taken into account to convict the appellant. The learned A.G.A. refuted the contention and contended that there is no rule of law or prudence which requires the evidence of close relation or interested witnesses must be discarded for the simple reason that the evidence.

is of the interested person. It should be kept in mind while appreciating the evidence that the parties must be interested to give their evidence so as to convict the wrong doer for their wrong doing and they would not like to adopt a course by which some innocent person would be convicted in place of the person really guilty of causing Injuries to the injured. If the witnesses are interested their evidence can be scrutinized very cautiously but it cannot be rejected outrightly. In the recent times it has been seen that the independent witnesses do not come forward to give the evidence in support of the prosecution. It is common where the witness remain indifferent and does not come forward to give the evidence before the court because of the prevailing social structure. In such circumstances, if the evidence of an interested person is discarded only on the ground of being interested it would be unjust and improper.

13. It was further pointed out by the learned counsel for the appellant that Jogender Singh PW3 has stated in his evidence that the Sub Inspector reached at the plot at about 7:00 pm and he recovered the holes of the cartridges and he has further stated as follows:

''हम शाम को सात बजे से पहले ही घर से चले गये थे। हमारे घर से चलने से पहले दरोगा ने मौके के खोखे बरामद किये थे। मैंने दरोगाजी को निशानदेही कराई थी। मुझे नहीं मालूम दरोगाजी किसके बुलाने पर गांव आ गये थे।''

Learned counsel for the appellant contended that the report was lodged after the recovery of the holes and the F.I.R. is hit by Section 162 Cr.P.C. The learned A.G.A. refuted the contention. Jogender Singh-PW2 has not stated that he went at 7:00 pm to lodge the report to the police station. He also pointed out that this statement had been given by the witness as he is rustic villagers. It is admitted to both the parties that the parties belong to the lower strata of the society and both the parties are Raisikhs. Raisikhs is a tribe in the Sikh community. They are not literate person. Sometimes a witness

from a rural background appears before the court and he is subjected to the cross examination and witness may not stand the test of cross examination which may sometimes because he is a bucolic person and is not able to understand the question put to him by the skillful cross-examiner and at times under the stress of cross-examination, certain answers are snatched from him. When a rustic or illiterate witness faces an astute lawyer, there is bound to imbalance and as such the statement cannot be read in isolation. **See Krishna Mochi and others versus State of Bihar, reported in 2002 Supreme Court cases (cri) 1220.** I am completely in agreement with the findings of the learned Sessions Judge who had held that it should be kept in mind that Jogender Singh-PW3 was a rustic witness of rural background who was completely illiterate. He happened to say under the stress of cross examination that the S.I. reached at the spot before he went from the place of occurrence. The evidence was recorded on 24.08.1981 after a lapse of more than one year and the incident took place on 19.04.1980. It is likely that he had stated this fact due to the loss of the money due to the lapse of time. Further there was no occasion for Jogender Singh-PW3 to falsely implicate the appellant. The evidence of Investigating Officer was consistent and credible that he reached at the spot on the next day and his evidence is also supported the documentary evidence.

14. While appreciating the evidence the courts have the duty to remove the chaff from the grain. It has to disburse the suspicious cloud and dust out of the smear of dust as all these things clog the very thing. So long chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the courts, no to merely conclude and leave the case the moment suspicious are created. It is the onerous duty of the Court within a permissible limits to find out the truth. It means on the one hand no innocent man should be punished but on the

other hand to see no person committing an offence should get scot-free. In these circumstance, the contention of the learned counsel for the appellant have no force.

15. It was further contended that PW-4 Sahzade is a chance witness and he belongs to Moja Deuodi and his presence was doubtful at the place of the incident. It was further contended that the prosecution had taken a case that his field was adjacent to the field of the complainant party. Learned counsel for the appellant further Contended that the I.O. had not shown the field of PW4-Sahzade in his site plan. The learned A.G.A. refuted the contention and contended that marks by which he reached at the spot had been shown by the Investigating Officer in the site plan. It is also in the evidence that the witness PW4-Sahzade had a field adjacent to the field of PW3-Jogender Singh. The prosecution has taken consistent case right from the beginning that he was having his filed near the field of injured. It was also in the evidence that he was on the field. The defence could not elicit during the cross examination that he had no field near the filed of Jogender Singh-PW3. His statement is totally credible and cogent. No importance could be attached to the fact that the I.O. had not shown where Jogender Singh-PW3 was working and where was the field of the witness form where he saw the assailants coming at the time of the incident. The Apex Court in **Prithivi Vs. mam Raj and others 2005 SCC (Cri) p/198 had held as under:-**

> ***"****19. The evidence of Sona (PW 32) to the effect that, he awoke because of barking of dogs and saw four persons running by and when he flashed the torch, he noticed three of the respondents and a fourth person whom be could not recognize, is also disbelieved by the High Court on the ground that the place where Son was sleeping was not shown in the site plan. The High Court also attached important the fact*

that the investigating officer had not put the date on which the statement of this witness was taken, although the investigating officer explained that he had forgotten to mention the date. The High Court assumes that on the dated of the incident itself, the police knew the names of the assailants; therefrom, it deduces that the fact that they were not arrested till 30.08.1993 makes the statement of the witness unreliable.

This, to say the least, is another piece of perverse reasoning."

16. IN view of the above discussion, I do not find any substance in the arguments advanced by the learned counsel for the appellant.

17. It was further contended by the learned counsel for the appellant that the learned Sessions Judge had disbelieved the evidence of the prosecution witnesses with regard to other co-accused who had been acquitted by the learned Sessions Judge had not participated in the crime. Learned counsel for the appellant further pointed out that if the learned trial court has rejected their testimony with regard to the participation of the co-accused then their testimony should be discarded as a whole with regard to the present appellant. The learned A.G.A. refuted the contention. It is also well settled principle of law that the maxim *falsus in uno falsus in omnibus* is not applicable in India. It is common experience in India that sometimes witnesses are prune to lapse of memory and sometimes the exaggerations and embellishment are made to implicate the other person that does not mean that whole of the testimony of the witnesses should be discarded. Some exaggeration or embellishment can appear in the testimony because of the lapse of time or poor memory at the time of the appreciation of the evidence and the evidence of the witnesses if it is found that the evidence of the prosecution witnesses is consistent and sufficient against the some accused and is also found that the prosecution evidence is

inconsistent and unreliable to other accused, the evidence which is consistent can be believed and the rest of the evidence can be disbelieved. The Hon'ble Apex court in **Krishna Mochi Vs. State of Bihar, 2002 SCC (Cri) 1220** held that even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where the Chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove the guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to the end. The maxim *falsus in uno, falsus in omnibus* has no application in India and the witnesses cannot be branded as liars. This maxim has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. The doctrine is a dangerous one, specially in India, for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely

because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroidery or embellishment. An attempt has to be made to separate the grain from the chaff, the truth from falsehood.

18. In view of the above principle of law, the learned Sessions Judge while appreciating the evidence had held that the prosecution evidence is unreliable with regard to the co-accused who have been acquitted by the trial court. It is also in the evidence of the prosecution that the appellant alongwith other co-accused came in the field of Trilok Singh-PW2 where he and his brothers were harvesting the crop of wheat with the help of the machine in the field situated infront of their house. It is also in the evidence of the prosecution that when the appellant and other co-accused came over there with tractor trolley and ask them to leave their field and run away. Trilok Singh-PW2 and his brothers Surender Singh and Jogender Singh immediately left from the place of the occurrence. When they reached near their house they challenged the appellant and other persons and ask them not to plough their field whereupon the appellant-Karnail Singh fired shot from his gun which hit Trilok Singh-injured in his chest and he immediately fell down. It is also in the evidence that thereafter 3-4 shots were fired but the shots did not his any of the person present there. Thus the incident of firing upon the deceased is a subsequent incident immediately after reaching at the spot. The learned Sessions Judge had found the participation of the other co-accused doubtful at the first instance and the evidence of the prosecution with regard to the firing upon by

the appellant was found credible and cogent. Learned counsel for the appellant further contended that if there are two sets of accused and they are prosecuted in a common trial under the same charge or the offence and some of the accused have been acquitted and the other accused is liable to be acquitted on the principle of stare decisis. To attract the principle of stare decisis, it is necessary to prove the fact that there must be the same charge against all the accused and the offence should have been committed in the same transaction and there should be same evidence for the same offence. If the transaction is different and the offence is different and set of evidence is different then the principle of stare decis is not applicable. I am of the view that the principle of stare decis is not applicable in this case. Thus the evidence of the prosecution cannot be discarded as while in this case. I don not find any merit in the argument advanced by the learned counsel for the appellant.

19. It was further pointed out that the Investigating Officer had not collected blood from the place of occurrence and it was further pointed out that the holes of the cartridges from the place of the incident was not sent to the ballastic expert to prove the fact that the said gun was used at the spot and the holes of the cartridges was fired from the said gun. It was further contended that in absence of such evidence, the appellant could not be convicted. Learned A.G.A. refuted the contention. Even if the Investigation is defective, that plaes into insignificance when ocular testimony is found credible and cogent. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect. To do so would tantamount to playing into the hands of the investigating officer if the investigation designedly defective. **(See Dhanaj Singh @ Shera and others Vs. State of Punjab 2004 (3) SCC P-654, Chhotu Vs. State of Maharashtra 1997**

CRI.L.J. 4394 (SC) and Karnel Singh Vs. State of M.P. 1995 CRL.L.J. 4173).

20. It is also prosecution case that the gun was recovered from the house of the appellant. The witnesses adduced by the prosecution in support of said recovery had been declared hostile and they have not supported the prosecution version. They are PW5-Darshan Singh and PW6-Bagga Singh. But the appellant had himself admitted in his statement recorded u/s 313Cr.P.C. that the gun of the appellant was recovered from his house by the Investigating Officer. Both the witnesses, PW5-Darshan Singh and PW6-Bagga Singh stated in their evidence that the Investigating Officer forcibly obtained their signature on the fard recovery. The signature on the fard memo is also admitted to the witnesses. As such, the recovery of the gun is proved in this case.

21. It was further contended on behalf of the appellant that the injuries are self inflicted. I have already indicated the injuries on the person of injured in the preceding para of my judgment. It needs not to repeat here again. There are three gun shot injuries at the chest, forearm and thigh. Perusal of the injuries itself reveals that nobody would like to cause the injuries on the chest which is the vital part of the body and the injuries where are said to be caused cannot be self inflected injuries. The evidence of the prosecution is corroborated by the Medical evidence. It is revealed that the appellant was responsible for the causing injuries on the person of Trilok Singh-PW2.

22. Learned counsel for the appellant further contended that the intention or knowledge was lacking in this matter. The learned A.G.A. refuted the contention. To constitute the offence u/s 307 I.P.C., it must be proved that there is intention or knowledge relating

to commission of murder and the doing of an act towards it. For the purposes of Section 307 I.P.C. what is material is the intention or knowledge and not the consequences of the actual act done for the purpose of carrying out the intention. If an act is done with the intention for causing death but which fails to bring out the intended consequence on account of intervening circumstances. In the absence of intention or knowledge which is necessary constituents for the evidence of 307 I.P.C. there cannot be any offence of attempting to murder. The intention which is the state of mind cannot be proved by the direct evidence. This fact can only be gathered or inspired form the other factors, like nature of the injuries, nature of the weapon used, the place where the injuries were caused and the circumstance in which the incident took place. On the perusal of the entire evidence, the appellant caused the injuries on the person of the injured by the fire arm. Thus the fire arm was used for committing the offence in this case. In the instant case, the evidence further reveals that the injuries were caused on the chest (vital part), forearm and thigh. It is also in the evidence that the nature of injuries were simple but it were caused by the dangerous weapon. It is not in the evidence that the fire was made aiming at the injured by the appellant.

23. Now. I have to examine the circumstance in which the incident took place. I have already indicated above how the fire was made. It is also in the evidence that the appellant after causing the injuries, fired again 3-4 times. But it is not in the evidence of the prosecution witness PW2- Trilok Singh and PW3-Jogender Singh that the aim was the injured-Trilok Singh. PW4-Sahzade has specifically stated as follows:

'' करनेल सिंह ने तीन चार फायर ऊपर को किये।''

if the intention to kill the injured by the appellant would have been, the appellant should have fired the rest shots aiming at the injured-

Trilok Singh and he had not fired aiming at the injured. The perusal of the record reveals that none has said that the appellant aimed at the injured. The injured fell down on the spot and thereafter he was brought to the house of the complainant but no fire was made upon him. This fact further leads to take inference that there was no intention to cause the murder of the injured and the appellant had intention only to cause the injuries. The gun is a deadly weapon as defined u/s 324 I.P.C. The ?Doctor has also opined that the injures are of simple nature and can be caused by the dangerous weapon. In these circumstances the offence u/s 307 I.P.C. is not made out against the appellant. The nature of the injuries was simple, the offence u/s 324 I.P.C. is made out against the appellant.

24. In view of the foregoing discussion, the appeal is partly allowed. The sentence and conviction u/s 307 I.P.C. awarded by the learned 1st Addl. Sessions Judge vide his order dated 13.07.1982 against the appellant are set aside. However, the appellant is convicted u/s 324 I.P.C. and is sentenced to undergo R.I. for a period of one year. Therefore, the impugned judgment and order is modified to the extent that the appellant is convicted u/s 324 I.P.C. instead of u/s 307 I.P.C. and he shall undergo R.I. for the period of one year instead of 4 years.

25. Let the record of the court below be sent to the trial court alongwith a copy of this judgment for compliance. Compliance report be submitted within four months.

(J.C.S. RAWAT, J.)

Dated: 08.05.2006
Shiv